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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,394	01/09/2004	Eduard Karel De Jong	06502.0555-01000	7898

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SUN MICROSYSTEMS/FINNEGAN, HENDERSON LLP
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WASHINGTON, DC 20001-4413

EXAMINER

RAMAKRISHNAIAH, MELUR

ART UNIT	PAPER NUMBER
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2614

DATE MAILED: 05/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/753,394

Applicant(s)

DE JONG, EDUARD KAREL

Examiner

Melur Ramakrishnaiah

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 April 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 41-46, 49, 51-61, 64, 66-70, 76-81, 84 and 86-90.
Claim(s) objected to: _____.
Claim(s) rejected: 72-75.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). 8-18-04, 11-2-04, 2-15-05,
13. ☐ Other: _____. 3-11-05, 4-22-05

Melur Ramakrishnaiah
Primary Examiner
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Response to Arguments in response to Final rejection

Rejection of claims 72-73 under 35 U.S.C 102(b) as being anticipated by Moses et al. (US PAT: 4,425,642, hereinafter Moses): Regarding rejection of claim 72 using the above reference, Applicant argues that "while Moses et al. may provide multiple frequency transmissions, the reference falls short of disclosing or even suggesting sending a sequence of basic signals during a sequence of fixed time periods. That is, merely sending basic signals and having them reconstructed, as disclosed by Moses et al. is not the same as receiving a data message transmitted as a sequence of basic signals during a sequence of fixed time periods". Regarding this, contrary to applicant's interpretation of Moses et al. reference, Moses et al. teaches multi frequency transmission using a basic plurality of fundamental frequencies (col. 3 lines 51-55) and receiving them at a receiver and reconstructing data signal (col. 7 lines 8-13). This clearly implies receiving the data message transmitted from the remote device over the communication channel as a sequence of basic signals during a sequence of fixed time periods because the reference teaches transmitting plurality of basic signals which take certain time interval to transmit and which are received at the receiver and decoded to reconstruct the transmitted signal. Since Moses et al. implicitly discloses applicant's claim limitation of claim 72, rejection of claim 72 is maintained.

Applicant arguments on rejection of dependent claim 73 is tied to independent claim 72 being patentable which is not as explained above.

Rejection of claim 74 under 35 U.S.C 103(a) as being obvious over Moses in view of Crespo et al. (US PAT: 5,177,768, hereinafter Crespo) and Noma et al. (US

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PAT: 6,295,313, hereinafter Noma): regarding rejection of claim 74 using the above combination of references, Applicant argues that "contrary to Examiner's assertions, the cited art does not teach or suggest the recitations of claim 74. generating estimates of data signals by decoding transmitted signals does not address recitations of claim 74, which requires, inter alia, "transmitting" a data message as a sequence of basic signals each having an amplitude based on determined channel's frequency characteristic. The Examiner, however, improperly alleges that "decoding transmitted signals" to estimate data symbols implies deriving a magnitude of transmitted signals based on frequency characteristics of a communication channel. This conclusion is not explicitly or implicitly supported by the cited art, and nor does it address the above noted recitations of claim 74". Regarding this, Moses teaches obtaining basic signals having an amplitude (col. 7 lines 9-13). Moses does not teach determining basic signals having an amplitude that is based on a determined frequency characteristic of the communication channel. However, Noma teaches determining frequency characteristic of the communicational channel to process the received signals (col. 5 lines 41-45); and Crespo teaches decoding the transmitted signals to generate estimate of data symbols (note: how data symbols are estimated: transformed spectrum is modulated by a frequency domain signal which is the product of: the transmitter magnitude, the conjugate of complex frequency function and the conjugate of channel characteristic. The modulator output is processed by a correlation detector to generate estimate of data symbols (col. 2 lines 63-68)) which clearly implies deriving a magnitude of transmitted signals based on frequency characteristics of a communication channel. (col. 2 lines 13-68). By using

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teachings of Noma and Crespo in Moses, one of ordinary skill in the art at the time invention was made would be able obtain applicant's claim limitation such as basic signals having an amplitude that is based on a determined frequency characteristic of the communication channel in order to obtain correct transmitted signals subject to channel characteristics during transmission to obtain correct transmitted data as taught by Noma and Crespo. Applicant further argues that motivation to combine the cited art is lacking and alleges the office action does not show, by clear and particular evidence, that a skilled artisan considering the cited art, and not having the benefit of applicant's disclosure, would have been motivated to modify the references in a manner resulting in applicant's claimed combination. The examiner's assertion that combining Norma et al. and Crespo et al. with Moses et al. would render ...the Office action does not show that the cited art, alone or in combination suggests the desirability of modification resulting in the combination of elements recited in the claims. Regarding this, Applicant is trying to make hindsight argument. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Applicant further alleges that examiner has not met the burden to show motivation to combine references. Contrary to applicants allegation regarding this,

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Examiner has clearly stated in the office action the following: Moses differs from claim 74 in that although he discloses receiving signals transmitted from the remote device and reconstructing basic signals with magnitude (col. 7 lines 6-13); he does not teach the following: determining frequency characteristics of the communication channel, and determining basic signal that has an amplitude based on determined channel's frequency characteristics.

However, Noma teaches determining frequency characteristic of the communicational channel to process the received signals (col. 5 lines 41-45); and Crespo teaches decoding the transmitted signals to generate estimate of data symbols, based on frequency characteristic of the communication channel (col. 2 lines 13-68, col. 18 lines 31-50) which implies deriving magnitude of the transmitted signals,

Thus, it would have been obvious to one of ordinary skill in the art at the time invention was made to modify Moses' system to provide for determining frequency characteristics of the communication channel, and determining basic signal that has an amplitude based on determined channel's frequency characteristics as this arrangement would facilitate determining transmitted signals subject to channel characteristics during transmission to obtain correct transmitted data as taught by Noma and Crespo.

In view of this, Examiner has clearly established a prima facie case of obviousness and rejection of claim 74 is maintained.

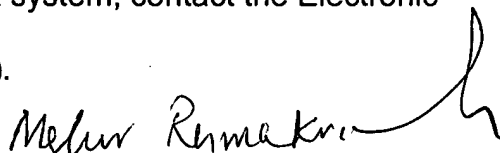
Applicants arguments on dependent claim 75 is tied to independent claim 74 being patentable which is not as established above.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melur Ramakrishnaiah whose telephone number is (571)272-8098. The examiner can normally be reached on 9 Hr schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curt Kuntz can be reached on (571) 272-7499. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Melur Ramakrishnaiah
Primary Examiner
Art Unit 2614